



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 24, 2004

Mr. James L. Hall
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2004-1347

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 196673.

The Texas Department of Criminal Justice (the "department") received a request for "a copy of the final findings on case #SC.12.5813.02.WM." You claim that the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code, the "law enforcement exception," excepts from required public disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 applies to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You indicate that the submitted information relates to an investigation conducted by the department's Office of the Inspector General (the "OIG") in which several of the accused individuals resigned prior to formal disciplinary findings and action. You state that "the

responsive information, although it is titled an administrative investigation, is excepted from release because it is an investigation into alleged criminal conduct which resulted in the arrest of several persons who were TDCJ employees at the time of the incident in question.” However, upon review of the submitted information, we do not find that it constitutes information developed by the department as a result of a criminal investigation conducted by the department. Rather, the information pertains to an investigation into potential violations of internal department policies and procedures.

You further indicate that criminal allegations relating to this matter were brought by another law enforcement agency. We note that section 552.108 may be invoked by any proper custodian of information which relates to an investigation or prosecution. *See, e.g.,* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). However, you have not represented that the agency that brought criminal allegations against the employees has requested that any portion of the submitted information be withheld from disclosure, nor have you represented to us that the submitted information has been forwarded to such an agency or that the department intends to forward this information to such an agency.

Further, we note that section 552.108 is generally not applicable to investigatory records that are purely administrative in nature. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.--El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You do not inform us, and the submitted information does not otherwise indicate, that the department’s administrative investigation associated with the submitted information resulted in any other criminal charges being brought against the accused. Therefore, after carefully considering your arguments and reviewing the submitted information, we find that the department has not adequately demonstrated that section 552.108 is applicable to any portion of the submitted information. Accordingly, we conclude that the department may not withhold any portion of the information at issue under section 552.108 of the Government Code.

We next address your claim under section 552.134 of the Government Code. This section, which relates to inmates of the department, provides in relevant part:

- (a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov’t Code § 552.134(a).

The submitted records pertain to a personnel issue involving several department employees. However, we note that portions of the submitted information concern inmates who are confined in a facility operated by or under a contract with the department. We therefore find that the department must withhold the identifying information of the inmates, that we have marked, under section 552.134.

We next consider your claim under section 552.117 of the Government Code. Section 552.117(a)(3) excepts the home address and telephone number, social security number, and family member information of current or former employees of the department. You indicate that some information in the submitted documents pertains to current or former department employees. We agree that the department must withhold the home address and telephone number, social security number, and family member information of current or former employees of the department pursuant to section 552.117(a)(3) of the Government Code. We have marked the types of information that must be withheld under section 552.117(a)(3). We note that although the requestor is a former employee of the department, the requestor has a special right of access to her own social security number, home address, telephone number, and family member information pursuant to section 552.023. *See* Gov't Code § 552.023 (a person has a special right of access to information that is excepted from public disclosure under laws intended to protect that person's privacy interest as the subject of the information). Thus, the requestor's own home address and telephone number, social security number, and family member information may not be withheld under section 552.117(a)(3) and must be released to the requestor.

In summary, the department must withhold the marked identifying information of inmates pursuant to section 552.134. We have marked the types of information that must be withheld under section 552.117(a)(3). The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 196673
Enc. Submitted documents

c: Ms. Tammy M. Cooley
4004 FM 1113
Copperas Cove, Texas 76522
(w/o enclosures)